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Attorney for Plaintiff  
Jose Escobedo

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JOSE ESCOBEDO,

Plaintiff,

vs.

MARIA GLORIBEL VIDES GUARDADO  
dba MARISCOS EL PATRON MEXICAN  
FOOD; VICTOR HUGO GONZALEZ;  
EDITH GONZALEZ GUARDADO; ERIKA  
GONZALEZ; OCTAVIO GONZALEZ;  
AMADO GONZALEZ, JR.;

Defendants.

) No.  
)  
) **COMPLAINT ASSERTING DENIAL OF**  
) **RIGHT OF ACCESS UNDER THE**  
) **AMERICANS WITH DISABILITIES ACT**  
) **FOR INJUNCTIVE RELIEF,**  
) **DECLARATORY RELIEF, DAMAGES,**  
) **ATTORNEYS' FEES AND COSTS (ADA)**  
)  
)  
)

**I. SUMMARY**

1. This is a civil rights action by plaintiff JOSE ESCOBEDO ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Mariscos El Patron Mexican Food  
4326 East Kings Canyon Road  
Fresno, California 93702  
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against MARIA GLORIBEL VIDES GUARDADO dba MARISCOS EL PATRON

1 MEXICAN FOOD; VICTOR HUGO GONZALEZ; EDITH GONZALEZ GUARDADO;  
2 ERIKA GONZALEZ; OCTAVIO GONZALEZ and AMADO GONZALEZ, JR. (hereinafter  
3 collectively referred to as “Defendants”), pursuant to Title III of the Americans with  
4 Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

## 5 **II. JURISDICTION**

6 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA  
7 claims.

8 4. Supplemental jurisdiction for claims brought under parallel California law –  
9 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

10 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

## 11 **III. VENUE**

12 6. All actions complained of herein take place within the jurisdiction of the United  
13 States District Court, Eastern District of California, and venue is invoked pursuant to 28 U.S.C.  
14 § 1391(b), (c).

## 15 **IV. PARTIES**

16 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or  
17 persons), firm, and/or corporation.

18 8. Plaintiff suffers from rheumatoid arthritis which impairs his ability to move his  
19 joints without pain, is substantially limited in his ability to walk requiring a cane for mobility,  
20 and has limited dexterity due to arthritis and finger amputation. Consequently, Plaintiff is  
21 “physically disabled,” as defined by all applicable California and United States laws, and a  
22 member of the public whose rights are protected by these laws.

## 23 **V. FACTS**

24 9. The Facility is open to the public, intended for non-residential use, and its  
25 operation affects commerce. The Facility is therefore a public accommodation as defined by  
26 applicable state and federal laws.

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1           10. Plaintiff lives less than ten miles from the Facility and visited the Facility on or  
2 about August 30, 2022 to dine at the restaurant. During his visit to the Facility, Plaintiff  
3 personally encountered barriers (both physical and intangible) that interfered with, if not  
4 outright denied, Plaintiff's ability to use and enjoy the goods, services, privileges and  
5 accommodations offered at the Facility. These barriers include, but are not necessarily limited  
6 to, the following:

- 7           a) There is no designated accessible parking in the Facility's parking lot.  
8 Plaintiff had to park in a standard parking stall. This did not cause  
9 additional difficulty to Plaintiff at the time of his visit, but could be a  
10 barrier to him in the future if he has to park far away from the Facility  
11 entrance due to the lack of a designated accessible parking stall close to  
12 the entrance, since it is difficult for him to walk long distances.
- 13           b) There is no accessible route from the parking area to the Facility  
14 entrance. The route of travel from Plaintiff's vehicle to the Facility  
15 entrance was cracked and uneven, with excessive changes in level. It  
16 was difficult for Plaintiff to walk across the uneven route to reach the  
17 entrance.
- 18           c) The threshold at the Facility entrance is too high, which made it difficult  
19 for Plaintiff to step over. Additionally, the required interior maneuvering  
20 clearances at the Facility entrance door contain excessive slopes, which  
21 compounded the difficulty Plaintiff experienced walking through the  
22 doorway.
- 23           d) The Facility's exterior doors at the main entrance and patio entrance are  
24 not properly adjusted or maintained with regard to closing speed. As a  
25 result, the doors were difficult for Plaintiff to hold open while he walked  
26 through.
- 27           e) The routes of travel inside the Facility through the dining areas contain  
28 excessive slopes. As a result, it was difficult for Plaintiff to maintain his

balance while walking through the restaurant.

f) The locking mechanism on the restroom door requires tight grasping, pinching, and/or twisting of the wrist to operate. As a result, it was difficult and painful for Plaintiff to lock and unlock the door.

g) The toilet in the restroom is positioned too far away from the side wall, and the grab bars are improperly positioned. As a result, it was difficult for Plaintiff to lower himself and stand up from the toilet.

h) The required clear floor space adjacent to the transaction counter contains excessive slopes. As a result, it was difficult for Plaintiff to maintain his balance while paying at the counter.

11. There may exist other barriers at the Facility which relate to Plaintiff's disabilities, and he will seek to amend this Complaint once such additional barriers are identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to his disabilities removed to afford him full and equal access.

12. Plaintiff was, and continues to be, deterred from visiting the Facility because Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities. Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility once the barriers are removed.

13. Defendants knew, or should have known, that these elements and areas of the Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendants have the financial resources to remove these barriers from the Facility (without much difficulty or expense), and make the Facility accessible to the physically disabled. To date, however, Defendants refuse to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

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Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

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33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

## **VII. SECOND CLAIM**

### **Unruh Act**

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

37. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

38. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

## **VIII. THIRD CLAIM**

### **Denial of Full and Equal Access to Public Facilities**

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.



43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: 03/03/2023

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore  
Attorney for Plaintiff  
Jose Escobedo

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<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

**VERIFICATION**

I, JOSE ESCOBEDO, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 3/3/2023

/s/ Jose Escobedo  
Jose Escobedo

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore  
Tanya E. Moore  
Attorney for Plaintiff,  
JOSE ESCOBEDO